

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-02-418 GEB GGH P

VS.

ANTELMO ONTIVEROS,

Movant.

ORDER

Movant is proceeding pro se with a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The motion, filed March 16, 2009, raises claims of ineffective assistance of trial and appellate counsel. On May 7, 2009, respondent filed a motion for an order finding a waiver of attorney client privilege. On May 18, 2009, the court granted movant fourteen days to file either an opposition or statement of non-opposition to this motion. Fourteen days passed and movant did not respond to the May 18, 2009, order.

It has long been the rule that when a petitioner raises a claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all communications with his allegedly ineffective lawyer. See Bittaker v. Woodford, 331 F.3d 715, 716 (9th Cir. 2003). Good cause appearing, respondent's motion is granted.

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1 Accordingly, IT IS ORDERED that:

2 1. Respondent's May 7, 2009, motion for an order finding waiver of the attorney-
3 client privilege (no. 169) is granted;
4 2. Movant has waived attorney-client privilege as to all communications with his
5 counsel regarding the ineffective assistance of counsel claims raised in the instant motion.

6 DATED: June 25, 2005

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8 /s/ Gregory G. Hollows

9 UNITED STATES MAGISTRATE JUDGE

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